

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

BARBARA LYNN CHAVEZ,

Petitioner,

v.

GLORIA HENRY, WARDEN,

Respondent.

CV F 05-00490 REC DLB HC

ORDER VACATING FINDINGS AND
RECOMMENDATIONS, DIRECTING CLERK
OF COURT TO FILE AMENDED PETITION,
AND DIRECTING RESPONDENT TO
SUBMIT RESPONSE TO AMENDED
PETITION

[Docs. 15, 17, 18]

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

On October 6, 2005, Respondent filed a motion to dismiss the petition on the ground that the petition contained both exhausted and unexhausted claims. On November 17, 2005, the Magistrate Judge issued Findings and Recommendation that the Motion to Dismiss be GRANTED. This Findings and Recommendation was served on all parties and contained notice that any objections were to be filed within thirty (30) days of the date of service of the order. On the same date that the Findings and Recommendations was issued, Petitioner filed a motion to amend the petition to delete the unexhausted claim, apparently in response to Respondent's motion to dismiss. (Court Doc. 17.) On this same date, Petitioner filed a motion for the Court to accept the untimely amended petition. (Court Doc. 18.)

In the Court's Findings and Recommendations of November 17, 2005, the Court informed Petitioner that she could move to withdraw the unexhausted claim. Since Petitioner has

1 submitted an amended petition deleting the unexhausted claim - Ground Two of the original
2 petition, Petitioner's motion to file the untimely petition is DISREGARDED as unnecessary.
3 The Court will vacate the Findings and Recommendations, order the Clerk of Court to file the
4 amended petition, and direct Respondent to submit a response to the amended petition.

5 Based on the foregoing, it is HEREBY ORDERED that:

- 6 1. The Findings and Recommendations of November 17, 2005, is VACATED;
- 7 2. The Clerk of Court shall file the amended petition, lodged November 17, 2005;
- 8 3. Within sixty (60) days from the date of service of this order, Respondent shall
9 submit a response to the amended petition in accordance with the Court's
10 September 8, 2005, order; and
- 11 4. Within thirty (30) days from the date Respondent files the answer to the amended
12 petition, Petitioner may file a traverse.

13
14 IT IS SO ORDERED.

15 **Dated: January 3, 2006**
16 3b142a

/s/ Dennis L. Beck
UNITED STATES MAGISTRATE JUDGE